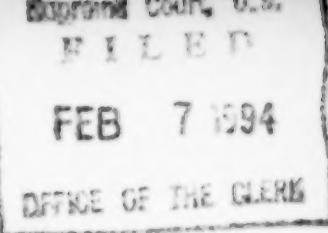


No. 93-445



In the Supreme Court of the United States

OCTOBER TERM, 1993

LENARD RAY BEECHAM AND KIRBY LEE JONES, PETITIONERS

v.

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

BRIEF FOR THE UNITED STATES

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

EDWARD C. DUMONT
Assistant to the Solicitor General

JOHN F. DE PUE
Attorney

*Department of Justice
Washington, D.C. 20530
(202) 514-2217*

34 pp

QUESTION PRESENTED

Whether a person with a federal felony conviction who has had his civil rights restored under state law is deemed a convicted felon for purposes of 18 U.S.C. 922(g)(1), which makes it a federal offense for a convicted felon to possess a firearm.

(I)

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BRIEF FOR THE UNITED STATES**OPINIONS BELOW**

The opinion of the court of appeals in *United States v. Beecham*, Pet. App. 1a-9a, is unpublished, but the decision is noted at 993 F.2d 1539 (Table). The opinion of the district court in that case, J.A. 10-16, is unreported. The opinion of the court of appeals in *United States v. Jones*, Pet. App. 10a-22a, is reported at 993 F.2d 1131; the district court's order, J.A. 23-24, and the magistrate's recommendation, Pet. App. 25a-30a, in that case are unreported.

JURISDICTION

The court of appeals entered its judgment in *Jones* on May 24, 1993, and in *Beecham* on June 2, 1993. The court denied a petition for rehearing in *Beecham* on June 29, 1993. Pet.

(1)

App. 23a. On August 13, 1993, the Chief Justice extended the time for filing a petition for a writ of certiorari in *Jones* to and including September 21, 1993. Pet. App. 24a. The combined petition in both cases was filed on that date and granted on November 15, 1993. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 922(g) of Title 18 provides in pertinent part as follows:

It shall be unlawful for any person—

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year,

* * * * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

2. Section 921(a)(20) of Title 18 provides as follows:

The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to anti-trust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the laws of the jurisdic-

tion in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

STATEMENT

1. Petitioner Kirby Lee Jones was indicted in the United States District Court for the Northern District of West Virginia on one count of possessing a firearm after having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. 922(g)(1), and one count of making a false statement in connection with the purchase of a firearm, in violation of 18 U.S.C. 922(a)(6). J.A. 19-21.

a. In connection with the charge under Section 922(g)(1) the indictment alleged that Jones had three prior felony convictions: a 1969 West Virginia state conviction for breaking and entering, a 1978 West Virginia state conviction for forgery, and a 1971 federal conviction from a United States District Court in Ohio for interstate transportation of a stolen automobile. J.A. 19-20.

Jones moved to dismiss the indictment on the ground that he "had [his] civil rights restored" under West Virginia law after his last state conviction, and that under 18 U.S.C. 921(a)(20), none of his prior convictions imposed any continuing federal firearms disability. In support of that contention, he proffered a 1982 West Virginia certificate discharging him from parole and providing that "any or all civil rights heretofore forfeited are restored." J.A. 22.

The government conceded that West Virginia's restoration of Jones's civil rights following his West Virginia convictions

precluded reliance on either of those convictions for purposes of 18 U.S.C. 922(g)(1). See Pet. App. 27a. The government maintained, however, that the state discharge had no effect on the use of Jones's prior federal conviction.

A magistrate judge recommended that the indictment be dismissed. Pet. App. 25a-30a. Relying on the decisions of the Ninth Circuit in *United States v. Geyler*, 932 F.2d 1330 (1991), and the Eighth Circuit in *United States v. Edwards*, 946 F.2d 1347 (1991), the magistrate concluded that state law defines whether a former felon's civil rights have been restored for purposes of Section 921(a)(20), even where the prior conviction is a federal one. The magistrate found that the federal conviction therefore could not serve as the predicate conviction for the charge against petitioner under Section 922(g)(1). The district court adopted the magistrate's recommendation and dismissed the indictment. J.A. 23-24.

b. The court of appeals reversed, rejecting the holdings in *Geyler* and *Edwards*. Pet. App. 10a-22a. The court observed that the "linchpin" of the *Geyler-Edwards* analysis "is that the second sentence of [Section 921(a)(20)] should be considered apart from the first." *Id.* at 15a. Even on that basis, it found the other courts' "plain language" analysis unconvincing. *Id.* at 16a-17a. The court reasoned that the language, history, and purpose of Section 921(a)(20) compelled the conclusion that in enacting it "Congress clearly wished to endow each state with the power to determine how convictions by *that state* would be treated." Pet. App. 20a (emphasis added).

Noting that "a preference exists for determining the meaning of federal criminal legislation without reliance on diverse state laws," Pet. App. 20a, the court of appeals concluded that "a far greater degree of specificity would be necessary before [it] would be willing to find a statutory intent to allow the individual states to negate federal convictions." *Ibid.* Because it found the statute unambiguous when construed in

light of its legislative history, the court declined to apply the rule of lenity. *Id.* at 21a-22a.

2. a. In 1979, petitioner Lenard Ray Beecham was convicted in the United States District Court for the Western District of Tennessee of violating 18 U.S.C. 922(h). C.A. App. 37-39. Following completion of his sentence on that conviction, Beecham moved to North Carolina and became a partner in a used car dealership. Pet. App. 3a. Although neither Beecham nor the dealership possessed a federal firearms license, Beecham regularly used its business premises to buy and sell firearms. On one occasion, he bought a shotgun from a licensed firearms dealer, and in completing the required federal form he answered "no" to the question whether he had ever been convicted in any court of a crime punishable by imprisonment for more than one year. *Ibid.*; J.A. 6. In March 1991, law enforcement officers executing search warrants at Beecham's business premises and home discovered a number of firearms. Pet. App. 4a.

b. Beecham was indicted and tried for being a felon in possession of firearms, dealing in firearms without a license, and making a false statement in connection with the purchase of a firearm. At the close of the government's case, he moved for a judgment of acquittal on the felon-in-possession and false statement counts. He argued that, by operation of Tennessee law, his civil rights were restored upon completion of the sentence on his federal conviction and that, under Section 921(a)(20), a felon whose civil rights have been restored does not fall within the class of persons prohibited from possessing firearms under 18 U.S.C. 922(g)(1). The district court deferred ruling on the motion.

After the jury returned judgments of conviction on all counts, Beecham renewed the motion. Relying upon Fourth Circuit precedent involving state convictions, the court first held that, as between North Carolina and Tennessee, "the relevant jurisdiction for purposes of [the Section 921(a)(20)]

inquiry is the state in which the predicate offenses occurred.” J.A. 13. On the authority of the Eighth and Ninth Circuits’ decisions in *Edwards* and *Geyler*, the court rejected the government’s contention that federal law, not any state’s law, governed the effect of the prior federal conviction.

Applying Tennessee law, the district court observed that individuals convicted before 1986 are entitled to petition a state court for restoration of their civil rights. J.A. 14. Construing lack of restoration as an element of the offense under 18 U.S.C. 922(g)(1), the court held that the government had failed to prove that Beecham’s rights had not been restored under Tennessee law after the completion of his federal sentence. J.A. 15. The court accordingly entered judgments of acquittal on the possession and false statement counts. J.A. 15-16.

c. The government appealed, and the court of appeals reversed. Pet. App. 1a-5a. Based on its decision with respect to petitioner Jones, the court concluded that “Beecham’s 1979 conviction in federal court remains unaffected by Tennessee’s, North Carolina’s, or any other state’s, restoration-of-rights scheme for purposes of [the] federal firearms statutes.”¹ Pet. App. 5a. The court therefore remanded the case to the district court for resentencing. Pet. App. 9a.

INTRODUCTION AND SUMMARY OF ARGUMENT

Our submission in this case is simple: For purposes of the firearms restrictions imposed by the federal Gun Control Act, 18 U.S.C. 921 *et seq.*, a person’s continuing status as a convicted felon is determined by the jurisdiction in which he was originally convicted. If the felony on which the federal

¹ The court of appeals also rejected Beecham’s claim, on cross-appeal, that the evidence was insufficient to support his convictions for engaging in an unlicensed firearms business. Pet. App. 8a-9a. That issue is not before this Court.

firearms disability is based was a state offense, then the law of the convicting State determines the status of the defendant’s conviction for federal purposes. Similarly, if the predicate felony was a federal offense, then it is federal law that determines the status of the defendant’s conviction, not the law of some other jurisdiction.

The 1986 amendments to 18 U.S.C. 921(a)(20) at issue in these cases were enacted in light of this Court’s decision in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983), and similar lower court cases. Those cases had held that state law did not determine whether a State’s own criminal adjudications qualified as predicate convictions under the federal law prohibiting previously convicted felons from possessing firearms. To change that rule, Congress amended Section 921(a)(20) so that, for purposes of the federal firearms disability, each State’s law would determine the existence and continuing effect of that State’s felony convictions. Congress did not, however, take the further step of conceding to the States the right to determine the effect, under federal law, of prior federal convictions.

Petitioners argue that Congress did take that step, and that the plain language of Section 921(a)(20) makes that clear. In fact, however, the statute does not say, plainly or otherwise, that the status of federal convictions is to be determined by state law, any more than it says that the status of one State’s convictions is to be determined by the law of a different State.

In the first sentence of the 1986 amendment to Section 921(a)(20), Congress provided that what constitutes a “conviction” is to be determined by the laws of the convicting jurisdiction; in the second sentence, it provided that a conviction that has been set aside or expunged, or for which the defendant has been pardoned or had his civil rights restored,

is not to be considered a “conviction” for purposes of the federal firearms disability. Because the context (and in particular the first sentence) of the 1986 amendment made clear that it was the manner in which the convicting jurisdiction treated its own convictions that governed the status of those convictions for federal law, it was not necessary for the second sentence to specify independently that the orders of expungement, orders setting aside convictions, pardons, or restorations of civil rights to which it referred would be actions by the convicting jurisdiction. Thus, the most natural reading of the statute is that the status of a particular action by a particular jurisdiction—whether the action constitutes a “conviction” in the first place, and whether it subsequently continues to constitute a “conviction” for purposes of the federal firearms laws—is to be decided by the law of that jurisdiction. As applied to federal felonies, that means that the question whether a federal conviction is to be taken into account for purposes of the federal firearms disability is a question of federal law, not a question to be decided under the law of any State.

The interpretation of the statute proposed by petitioners would lead to intractable problems of construction. Petitioners do not suggest which State’s law should be consulted to determine whether a federal felony is to be given continuing effect, and there is nothing in the statute that gives any hint of which State’s law should control—the State of the defendant’s residence, the State of the defendant’s prior federal felony conviction, the State where the defendant commits the new firearms offense, or some other State. Since that question would be such an obvious one if state law were intended to control the construction of federal felonies, the fact that the statute provides no answer casts serious doubt on petitioners’ construction.

Moreover, although petitioners argue that we are seeking a special rule for federal convictions, just the opposite is true. Under our interpretation of Section 921(a)(20), all jurisdictions are treated alike: each jurisdiction’s law determines the effect of that jurisdiction’s convictions. Under the approach taken by the Eighth and Ninth Circuits, each State’s law determines the effect of that State’s convictions, but federal convictions are treated differently. For a federal conviction, state law (or, at least, the law of some State) would determine the status of the conviction for purposes of the federal firearms disability. There is nothing in the text, the background, or the purpose of Section 921(a)(20) that would support such a special (and indeterminate) rule for federal convictions. The statute should therefore be interpreted to apply to federal convictions the same rule that has been uniformly applied to determine the status of state convictions under Section 921(a)(20): in both cases, the status of a conviction for purposes of the federal firearms laws should be determined by the law of the convicting jurisdiction.

ARGUMENT

STATE LAW CANNOT RESTORE A FEDERAL FELON’S RIGHT TO POSSESS FIREARMS UNDER THE FEDERAL GUN CONTROL ACT

A. A Felon’s Civil Rights Must Be Restored By The Jurisdiction That Imposed His Conviction In Order For Him To Regain His Right To Possess Firearms Under 18 U.S.C. 921(a)(20)

Section 921(a)(20) was enacted in the wake of this Court’s decision in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983). In *Dickerson*, David Kennison, a representative of the respondent corporation, was convicted of a state crime in an Iowa state court. The Iowa court deferred entry of a

formal judgment and placed Kennison on probation. At the end of Kennison's probation term, his record with regard to the deferred judgment was expunged. Although Kennison's state criminal record had been expunged, this Court held that he was still deemed to have a prior felony conviction for purposes of the federal Gun Control Act. The Court observed that under the terms of the federal statute, a conviction that was subsequently expunged was still a conviction, even if the State in which the proceedings were held regarded the defendant as not having been convicted at all.

Partially in response to *Dickerson* and other similar federal court decisions,² Congress enacted the Firearms Owners' Protection Act of 1986 (FOPA), Pub. L. No. 99-308, § 101(5), 100 Stat. 449, the statute at issue in this case. The pertinent portion of that Act consists of two sentences added at the end of 18 U.S.C. 921(a)(20). The first sentence provides that what constitutes a conviction "shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." The second sentence provides that a conviction that has been expunged or set aside or for which the defendant has been pardoned or had his civil rights restored is not considered a conviction (unless the defendant's right to possess firearms has not been restored). Those two sentences deal with the two aspects of the *Dickerson* Court's construction of the Gun Control Act: (1) the principle that a "conviction" for federal purposes could include a disposition that was not regarded as a "conviction" by the State that imposed it; and (2) the principle that the federal firearms

² See, e.g., *Thrall v. Wolfe*, 503 F.2d 318 (7th Cir. 1974), cert. denied, 420 U.S. 972 (1975), cited in S. Rep. No. 583, 98th Cong., 2d Sess. 7 n.17 (1984), which held that a state pardon for a state offense (explicitly reconferring the state right to bear firearms) did not alter the status of the state conviction for purposes of 18 U.S.C. 922 (as then in effect).

disability for a state conviction could continue even after the State that imposed the conviction had formally relieved the defendant of all of its other consequences under that State's law.

FOPA altered both of those rules and established two ways for a defendant to avoid liability under the Gun Control Act. The defendant could show that a particular criminal disposition was not considered a "conviction" under the laws of the jurisdiction in which the disposition was entered, or the defendant could show that the conviction had been vacated, expunged, or otherwise deprived of continuing effect by the jurisdiction that issued it.

Petitioners argue that FOPA's amendment to Section 921(a)(20) did much more than that. They contend that the amendment must be read to mean that under the Gun Control Act "[a] person convicted of *any* felony—state or federal—may possess or receive firearms if his rights have been [restored] by *any* law—state or federal." Br. 34. They base that argument on what they deem to be the "plain meaning" of the last sentence of Section 921(a)(20). In their view, because the term "restoration of civil rights" is not qualified by a reference to the jurisdiction where the conviction was obtained, the term must include not only the restoration of civil rights by the convicting jurisdiction, but the restoration of civil rights in one jurisdiction for a conviction obtained in another.

Petitioners' interpretation of the statute cannot possibly be right. If the term "restoration of civil rights" is not understood to refer to a restoration by the convicting jurisdiction, it would mean that if State A restored a defendant's civil rights following his conviction in State B, the State B conviction would no longer qualify as a conviction under federal law. That would be so even if State B regarded its own

conviction as still perfectly valid and still sufficient to bar the defendant from possessing firearms in that State. Carried to its logical end, petitioners' interpretation of Section 921(a)(20) means that the State of Wyoming could render convictions from every other State and from federal courts unusable as "convictions" under the Gun Control Act if Wyoming law restored civil rights to persons convicted in other jurisdictions as soon as they were released from custody.

It is difficult to tell whether petitioners actually mean to advocate that result. Compare, e.g., Br. 24 (restoration "in any manner or by any jurisdiction") with Br. 39-40 (urging remand to determine governing state law). But that is exactly where their "plain meaning" argument drives them. They insist (Br. 12-13) that there is no textual basis for construing the phrase "restoration of civil rights" as limited to the convicting jurisdiction. But if the restoration of civil rights is not limited to the convicting jurisdiction, there is no textual basis for deciding what other jurisdiction's law to consult in determining whether a restoration of civil rights has the effect of removing the federal firearms disability. To suggest that the "restoring" jurisdiction should be the State in which the federal conviction was obtained, or the State in which the defendant was residing when he committed the subsequent federal firearms violation, or the State in which the defendant was charged with the federal firearms violation, requires a complete departure from the text of the statute to which petitioners claim strict allegiance. See Pet. App. 16a-18a.

We submit that neither the extreme position that is the logical consequence of petitioners' argument, nor any of the various contrived stopping places along the way to that extreme position, captures the meaning of Section 921(a)(20) that is found in the language and context of the statute. See, e.g., *King v. St. Vincent's Hosp.*, 112 S. Ct. 570, 574 (1991) ("the meaning of statutory language, plain or not, depends

on context"). Instead, a fair reading of the last sentence of Section 921(a)(20), in the context in which it appears, makes clear that the "restoration of civil rights" referred to in the statute is the restoration of civil rights by the jurisdiction in which the conviction was obtained.

The first sentence added to Section 921(a)(20) by FOPA states that the definition of a "conviction" for purposes of the Gun Control Act depends on "the law of the jurisdiction in which the proceedings were held." The second sentence refers to four means by which a conviction can lose its disqualifying effect for purposes of the Gun Control Act: by expungement, by pardon, by being set aside, and by the restoration of civil rights. Although the statute does not explicitly state with respect to any of the four that the convicting jurisdiction must be the one to take the action in question, that is clearly so with respect to the first three, and petitioners do not argue to the contrary. Orders of expungement, orders setting aside a conviction, and pardons all typically are issued by the State that imposed the conviction,³ and there was no need for Congress to refer to the convicting jurisdiction in order to make its meaning clear. See *United States v. Geyler*, 932 F.2d at 1333-1334.

³ The sole arguable exception is for federal court orders granting writs of habeas corpus "setting aside" state convictions. And even that is not strictly an exception, since a writ of habeas corpus does not formally "set aside" the state court judgment; it merely directs that the prisoner may not continue to be confined (or suffer similar effects) under that judgment. The Ninth Circuit in *Geyler* recognized the jurisdictional limitation of pardons, expungements, and orders setting aside convictions, but viewed restoration of civil rights as "an entirely different matter," on the theory that "[b]ecause there is no federal procedure for restoring civil rights to a federal felon, Congress could not have expected that the federal government would perform this function." 932 F.2d at 1333. That argument is unpersuasive for the reasons set forth at pages 24-25, *infra*.

The same analysis applies to measures restoring the defendant's civil rights. The reference to the restoration of civil rights is juxtaposed with and clearly intended to parallel the broader but otherwise similar device of a pardon. Both actions are formal steps by which a particular jurisdiction alleviates the collateral consequences of a conviction. Although Section 921(a)(20) does not refer to a "pardon from the convicting jurisdiction," that is plainly what is meant; the federal firearms disability is removed because the jurisdiction that imposed the conviction has chosen to eradicate the effects of that conviction, returning the defendant to his pre-conviction status.

Similarly, although Section 921(a)(20) does not refer to the restoration of civil rights "by the convicting jurisdiction," that is the meaning indicated by both the language and the context. The statute does not refer to "restoration by any jurisdiction," which would indicate a broader meaning for the term, nor is there any other suggestion in the language of the statute that it was meant to render one State's "conviction" no longer cognizable under the Gun Control Act if any other State restored the defendant's civil rights for the first State's conviction. The term "restored" means the return of something that was taken away, and the most natural interpretation of the term in this setting is to refer to an act by one sovereign to return to the defendant the rights that that sovereign took away when it convicted the defendant. Thus, the two sentences that were added to Section 921(a)(20) in 1986 focused on the convicting jurisdiction's treatment of its own convictions, either in their initial classification (covered by the first sentence) or in their later treatment (covered in the second sentence).

The legislative history of FOPA makes that point, although it does not address the precise issue in this case. The Senate Judiciary Committee explained that the design of the statute

was that the law of the convicting jurisdiction would determine the status of the conviction, and thus whether the defendant was subject to the federal firearms disability. The committee report explained: "Since the federal [firearms] prohibition is keyed to the state's conviction, state law should govern in these matters." S. Rep. No. 476, 97th Cong., 2d Sess. 18 (1982). That statement was echoed by Senator Hatch, FOPA's principal sponsor, in presenting to the Senate the bill that was finally enacted: "[The bill] grants authority to the jurisdiction (State) which prosecuted the individual to determine eligibility for firearm possession after a felony conviction or plea of guilty to a felony. This will accommodate State reforms enacted since 1968 which permit dismissal of charges after a plea and successful completion of a probationary period. Since the Federal prohibition is triggered by the States' conviction[s], the States' law as to what disqualifies an individual from firearms use should govern." 131 Cong. Rec. 16,984, 16,987 (1985). See also S. Rep. No. 583, 98th Cong., 2d Sess. 2-3 (background), 7 (1984).

In light of *Dickerson* and similar cases, and because the vast majority of criminal convictions are rendered by the States, the law's drafters were of course concerned primarily with the effect of state convictions. But the point made by the legislative history is that the convicting jurisdiction would determine the status of its own convictions for purposes of the federal firearms disability. That point settles the meaning of the term "restores," and therefore resolves cases, such as this one, that involve federal predicate convictions.

In sum, the proper construction of Section 921(a)(20) is that in order for the federal firearms disability to be lifted because of a restoration of civil rights, it is the convicting jurisdiction that must restore the defendant's rights, not some other jurisdiction, which may have much less concern with the first jurisdiction's convictions. Applying that analysis here,

the question whether a federal conviction continues to impose a federal firearms disability depends on the status of that conviction under federal law, not its status under the laws of any State.

B. Petitioners' Construction Of Section 921(a)(20) Does Not Provide A Coherent Rule For Applying The Statute

Although petitioners insist that the court of appeals' construction of Section 921(a)(20) is unfaithful to the "plain meaning" of the statute, they do not propose any competing construction that is dictated by that language. Thus, if the "restoration of civil rights" addressed in the last sentence of Section 921(a)(20) does not refer to the restoration granted by the convicting jurisdiction, it is entirely unclear what jurisdiction's practices would have to be consulted to determine whether the conviction at issue should be regarded as a "conviction" for purposes of the Gun Control Act.

In the case of a federal conviction, if it is not federal law that governs the question of whether the defendant's civil rights have been restored, one is left to guess what law should govern: the law of the State where the offender resides; the law of the State where the defendant committed the alleged firearms violation; the law of some other State that has some connection with the offender or the offense; or, perhaps, if petitioners are to be taken at their word (Br. 24), simply the law of "any jurisdiction." The fact that the statute, as interpreted by petitioners, gives no direction on those obvious and important issues is more than a mere matter of detail to be worked out by the court of appeals on remand, as petitioners appear to suggest (see Br. 39-40). It is a clear indication that Congress did not intend the statute to be interpreted as petitioners propose—because if it had, it surely would have addressed the question of which jurisdiction's restoration laws should apply.

Petitioners' own cases illustrate the confusion and disparate results that flow from a construction of the statute that severs the authority to restore civil rights from the jurisdiction in which the predicate conviction was returned. Petitioner Beecham was convicted of a felony in federal court in Tennessee. Pet. App. 3a. Following his discharge from that conviction, he moved to North Carolina. *Ibid.* The district court took the position that, where a federal predicate conviction for a Section 922(g)(1) violation is involved, the question whether the conviction continues to disqualify the defendant from possessing firearms or whether his civil rights have been restored is governed by the law of the State in which the federal court returning the conviction was located. J.A. 13-14. The court therefore looked to the law of Tennessee to determine whether Beecham's federal disability continued.

Petitioner Jones was convicted of a felony in a federal court in Ohio. Pet. App. 11a-12a. Apparently both before and after his excursion to Ohio, Jones lived in West Virginia, where he received a discharge certificate from the West Virginia Department of Corrections after completing his sentence for the second of two West Virginia convictions. *Id.* at 25a-26a. The district court adopted the view that the West Virginia certificate restored the civil rights that Beecham lost as the result of his federal conviction. *Id.* at 29a; J.A. 23-24.⁴

⁴ It is not at all clear, even as a matter of West Virginia law, that the district court was correct in giving that effect to the West Virginia restoration certificate. That certificate contained no statement to the effect that it was intended to restore any civil rights Jones might have lost as the result of his previous federal conviction. J.A. 22. Moreover, unlike many other States, West Virginia has no statute that expressly addresses the restoration of civil rights following a felony conviction, much less a statutory provision addressing whether such action is intended to extend to federal convictions. See 51 Op. Att'y Gen. W. Va. 182 (1965) (discussing restoration of rights after state felony conviction); cf. 54 Op. Att'y Gen. W. Va. 128 (1972) (discussing whether federal conviction disquali-

That court therefore took the view that it is the State of the defendant's residence at the time of the firearms possession, rather than the State where the federally disqualifying conviction was returned, that is empowered to grant such relief.

Although the two district courts looked to entirely different sources of state law to answer the restoration question—the State of residence in Beecham's case and the State where the prior offense took place in Jones's case—petitioners do not suggest which approach was correct and which was wrong. Nor do they even concede that one must necessarily be wrong.

In short, petitioners offer no assistance to the Court in determining how that basic choice-of-law question should be resolved under their theory, or even how it should be approached. Implicitly conceding the uncertainty resulting from their theory, petitioners suggest that the knotty question of which State's law governs the restoration of civil rights following a federal conviction can be sorted out on remand. Br. 40. But the problem is not so easily swept away. The fact that petitioners' proposed construction of the statute gives no direction whatsoever as to what State's law to consult in determining whether the federal firearms disability is still in effect undermines their claim to have identified Congress's intent.

Even if Section 921(a)(20) were to be construed to apply a particular State's law, such as the law of the State where the defendant resides,⁵ that construction would make the fire-

fied state legislator from office under state constitutional and statutory provisions). The court of appeals noted this issue, but declined to address it in light of its disposition of the case on other grounds. Pet. App. 15a n.5.

⁵ That was the position taken by the district court below in *Jones* and by the district court in the *Edwards* case, see *United States v. Edwards*, 745 F. Supp. 1477, 1479 (D. Minn. 1990). The courts of appeals in *Geyler* and *Edwards* did not take a position on what State's law should control.

arms disability provision of the Gun Control Act subject to ready manipulation by persons seeking to escape the disability. As the court of appeals acknowledged in *Edwards*, 946 F.2d at 1350, and as petitioners now concede (Br. 35-36), such an individual could take a "civil rights bath" by assuming residency in a State that restores civil rights automatically upon completion of a sentence or upon application, and thereby relieve himself of his firearms disability under Section 922(g).⁶ Although the court in *Edwards* regarded that anomaly as the responsibility of Congress, 946 F.2d at 1350 ("it is Congress and the Minnesota legislature, not this court, that have drawn the water"), the court got it backwards. The anomaly is not an unfortunate consequence of action that Congress has clearly taken; instead, the anomaly is one of the signs that Congress did not do what the *Edwards* court thought it had done.

A related problem is the unsettled status of federal convictions that would result under petitioners' regime. There is a wide variety of state civil rights restoration statutes. Some

⁶ Addressing the consequences of a construction of Section 921(a)(20) that permits such results, the court in *Jones* provided the following example:

[Suppose] [f]or example, A and B are released from federal prison after serving sentences for identical crimes. Each was prosecuted in the same district court in a state that does not restore civil rights to its own felons. A remains in the state in which he was prosecuted. After a while, he goes to visit B, who [is] then living in a state that does restore civil rights. Together they commit an armed robbery in B's new home state and are prosecuted in the federal court there for, among other offenses, violations of § 922(g)(1). Under *Geyler*'s holding, B could not be prosecuted for the firearm offense, whereas A could. A similar result would arguably obtain if B had only temporarily moved to the restoring state (long enough to get his "bath") and then committed the robbery in A's state.

Pet. App. 21a.

States restore civil rights, lost as the result of a conviction, automatically upon the person's discharge from custody.⁷ Others require the submission of an application to state authorities at some point after discharge.⁸ Still others never fully restore a felon's civil rights.⁹ See generally Burton, Travis & Cullen, *Reducing the Legal Consequences of a Felony Conviction: A National Survey of State Statutes*, 12 Int'l J. Comp. & App. Crim. Just. 101, 104-105 (1988). In addition, while some state restoration of civil rights statutes are broad enough to embrace federal as well as state convictions, either automatically or upon application,¹⁰ others are not, or contain no

⁷ See, e.g., Minn. Stat. Ann. § 609.165 (West 1987); N.C. Gen. Stat. § 13-1 (1992); Ohio Rev. Code Ann. § 2967.16 (Anderson 1993); Or. Rev. Stat. § 137.281(5) (1991); 51 Op. Att'y Gen. W. Va. 182, 186 (1965).

One threshold question is exactly which "civil rights" must be restored in order to invoke Section 921(a)(20). In general, the courts have focused on the rights to vote, hold public office and serve on juries (and treated as a separate issue any continuing firearms disabilities imposed, even after restoration, by the convicting State itself). See, e.g., *United States v. Cassidy*, 899 F.2d 543, 545-550 (6th Cir. 1990); *United States v. Meeks*, 987 F.2d 575, 578 (9th Cir.), cert. denied, 114 S. Ct. 314 (1993).

⁸ See, e.g., Ariz. Rev. Stat. Ann. § 13-906 (1989) (application required of multiple offenders); Fla. Stat. Ann. § 944.293 (West 1985); Iowa Code Ann. § 914.2 (West 1993); Nev. Rev. Stat. § 213.157 (1991); Tenn. Code Ann. §§ 40-29-101, 40-29-102 (1990) (convictions rendered before 1986).

⁹ See, e.g., *United States v. Driscoll*, 970 F.2d 1472 (6th Cir. 1992) (holding that Michigan law never fully restores the right of a convicted felon to sit on a jury), cert. denied, 113 S. Ct. 1056 (1993); Mo. Rev. Stat. § 561.026 (Vernon 1979) (felons permanently disqualified from jury service unless pardoned); *United States v. Thomas*, 991 F.2d 206, 213-214 (5th Cir.) (Texas law), cert. denied, 114 S. Ct. 607 (1993).

¹⁰ See, e.g., Haw. Rev. Stat. § 831-5(b) (1988); La. Const. Art. 1, § 20; N.H. Rev. Stat. Ann. § 607-A:5 (II) (1986); N.C. Gen. Stat. § 13-2(b) (1992); Tenn. Code Ann. §§ 40-29-101(a), 40-29-105(b)(1) (1990); Wyo. Stat. § 7-13-105 (1977 & Supp. 1987).

indication whether they were drafted with federal convictions in mind.¹¹ In instances such as those presented by the instant cases, where a person has been convicted of a federal felony in one State and thereafter has significant contacts with other jurisdictions, a court operating under petitioners' construction of Section 921(a)(20) would first have to determine which State's statutory scheme would apply, and would then have to determine whether, and under what circumstances, that State would restore a person's civil rights following a federal conviction—often a difficult task.¹² Sorting out the answers would involve federal courts in a long and dismal effort to determine, in every case, the proper law, its content, and its application.¹³

¹¹ See, e.g., Miss. Code Ann. § 47-7-41 (1993); Nev. Rev. Stat. § 213.157 (1991) (limiting restoration to persons convicted in State); N.D. Cent. Code § 12-55-24 (1985); Ohio Rev. Code Ann. § 2967.16 (Anderson 1993).

¹² For example, the *Geyler* court had no case law or statutory guidance as to whether Arizona's restoration-of-civil-rights statute applied to federal felons; it answered that question in the affirmative based entirely on its own conclusion that to construe the Arizona statute otherwise would be "incongruous." 932 F.2d at 1331 n.1. The *Edwards* court reached the same conclusion with respect to Minnesota law based on a 1971 opinion of the Minnesota Attorney General, nullifying contrary language in the governing Minnesota statute. 946 F.2d at 1349 n.4. As we have noted (see note 4, *supra*), the magistrate in the *Jones* case simply assumed, without reference to any authority, that the state certificate of discharge that restored Jones's civil rights after his second West Virginia felony also restored his civil rights with respect to his federal felony conviction.

¹³ The prospects for confusion are nicely illustrated by the unpublished opinion of the Court of Appeals for the Sixth Circuit reprinted by petitioners in the appendix to their petition in these cases. Pet. App. 31a-52a. The court in that case considered the possible application of the laws of Arizona (the seat of the federal court that rendered the defendant's predicate conviction) and Michigan (where the defendant resided), before accepting the government's position that the defendant's rights had

C. Section 921(a)(20) Should Be Construed The Same Way For Federal Convictions As For State Convictions

Petitioners suggest that we are advocating a special rule for federal convictions that is different from the rule applicable to state convictions under Section 921(a)(20). See, e.g., Br. 15. That is not true. Our proposed rule is the same as the rule that has uniformly been applied to determine the status of state convictions under FOPA. In both cases, we submit, the status of a conviction for purposes of the firearms disability must be determined by the law of the convicting jurisdiction.

Where state convictions are involved, the courts of appeals have, without exception, adopted the interpretation of Section 921(a)(20) that we propose here. They have concluded that the relevant law for determining whether a person's civil rights have been restored is that of the convicting jurisdiction. For example, in *United States v. Dahms*, 938 F.2d 131 (1991), the Ninth Circuit addressed the question of what jurisdiction controlled the restoration of the defendant's civil rights when the defendant was convicted of a felony in Michigan but subsequently moved to Montana, where he used a shotgun to commit an aggravated assault. Observing that "[t]he first sentence of § 921(a)(20) dictates that the law of the state in which the felon was initially convicted governs the application of § 922(g)," the court reasoned that because "Dahms was originally convicted in Michigan

not been restored under either law, so that the court was not required to resolve the choice-of-law question. *Id.* at 44a-47a. In the process, the court noted (*id.* at 46a) a conflict between one of its own prior decisions, *United States v. Driscoll*, 970 F.2d 1472 (1992), and a decision of the Ninth Circuit, *United States v. Dahms*, 938 F.2d 131 (9th Cir. 1991), over the interpretation of Michigan law on the restoration of former felons' civil rights—a further complication made more likely by petitioners' construction.

* * * we must look to the law of that state." *Id.* at 133. Because, in the court's view, Michigan law had effectively restored the defendant's rights upon his release, it concluded that he was no longer "convicted" within the meaning of Section 922(g) at the time of his activities in Montana. 938 F.2d at 133. Accord *United States v. Meeks*, 987 F.2d 575, 578 (9th Cir.) (to determine whether defendant's civil rights were restored "we look to the law of * * * the state where the predicate conviction arose"), cert. denied, 114 S. Ct. 314 (1993).

Likewise, in *United States v. Cox*, 934 F.2d 1114 (10th Cir. 1991), the defendant was convicted of a felony in a California court and subsequently moved to Colorado, where he was arrested for possession of a pistol. In determining whether the defendant's civil rights had been restored under Section 921(a)(20) following the predicate conviction, the court reasoned that "[w]hether a conviction may serve as a predicate offense for § 922(g)(1) purposes is 'determined in accordance with the law of the jurisdiction' in which the conviction was secured." 934 F.2d at 1122. The court therefore looked to the law of California to determine whether the defendant's conviction continued in effect for purposes of the federal firearms disability. *Ibid.* See also *United States v. Essick*, 935 F.2d 28, 30 (4th Cir. 1991) ("in every § 922(g)(1) prosecution, the court must refer to the laws of the jurisdiction in which such purported conviction occurred" and analyze "whether and to what extent the jurisdiction in which the prior conviction occurred 'restores civil rights' "); *United States v. Breckenridge*, 899 F.2d 540, 542 (6th Cir.) (New Jersey law governs restoration of civil rights where defendant was convicted of predicate offense there and was subsequently arrested in Kentucky for firearms violation), cert. denied, 498 U.S. 841 (1990).

There is no principled basis for adopting a different approach when it is a federal conviction that disqualifies the

defendant from possessing a firearm. In such cases, as in cases involving state convictions, the courts should look to the law of the "jurisdiction in which the proceedings were held," *i.e.*, federal law, to determine whether the disqualifying conviction has been expunged or set aside, or whether the defendant has been pardoned or has had his civil rights restored.

The courts in *Geyler* and *Edwards* justified deviating from this interpretation of Section 921(a)(20) for federal convictions based in part on the courts' view that, although federal and state law both typically provide for pardons and the setting aside of convictions, federal law does not have a general procedure whereby a defendant can obtain a restoration of civil rights in the absence of full nullification of his conviction. *Geyler*, 932 F.2d at 1334; *Edwards*, 946 F.2d at 1350 & n.5. That observation, however, lends no support to petitioners' construction of the statute.

The fact that Congress enumerated various ways in which convicting jurisdictions might eliminate the continuing effect of felony convictions under the Gun Control Act does not suggest that it intended that each alternative would necessarily be available in each convicting jurisdiction. In fact, in some States there is no procedure for the complete restoration to convicted felons of certain civil rights, especially the right to sit on a jury. See note 9, *supra*. Nonetheless, no court has held that the laws of those States may be disregarded in determining whether civil rights have been restored within the meaning of Section 921(a)(20). Moreover, even if it were true that there were no federal disabilities predicated on prior felony convictions other than the firearms disability (which it is not; see *Geyler*, 932 F.2d at 1334 n.6), it is clear that Congress could impose such disabilities if it chose to do so. And if it did, then of course any civil rights affected could be restored only by federal, not state, action. Section 921(a)(20)'s reference to restorations of civil rights is there-

fore conceptually no different from its references to other actions always or normally taken only by the jurisdiction that has rendered a prior conviction.

In any event, Congress did provide a method for defendants to seek restoration of the precise "civil right" at issue here—the right to possess a firearm—following a federal conviction. Section 925(c) of Title 18 provides that the Secretary of the Treasury may, upon application, grant relief from the disabilities imposed by federal law with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of a firearm. 18 U.S.C. 925(c). The basis for that relief is a determination by the Secretary that "the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." *Ibid.* In cases in which a person has been convicted of a disqualifying offense by a federal court and has not been pardoned or had the conviction set aside, relief under Section 925(c) constitutes the proper avenue for the restoration of federal firearms rights.¹⁴ A federal felon who does not obtain

¹⁴ In the last two fiscal years Congress has prohibited any expenditure of appropriated funds for investigating or acting on applications under Section 925(c) (except, during 1994, applications made by corporations). Treasury Department Appropriations Act, 1994, Pub. L. No. 103-123, Tit. I, 107 Stat. 1228-1229 (1993); Treasury Department Appropriations Act, 1993, Pub. L. No. 102-393, Tit. I, 106 Stat. 1732 (1992). See H.R. Rep. No. 618, 102d Cong., 2d Sess. 13-14 (1992) (funds "would be better utilized * * * in fighting violent crime"). Congress's choice not to fund firearms rights restoration procedures during times of fiscal restraint merely underscores the basic point that the federal government is fully capable of providing, withdrawing, or qualifying the opportunity for federal felons to have their firearms rights restored through some procedure short of full nullification of the prior conviction. In this respect, the position and prerogatives of the federal government are no different from those of the States under Section 921(a)(20).

restoration in that manner should be in the same position as a state felon who has not obtained restoration of his civil rights from the convicting State: he should continue to be disabled from possessing a firearm under federal law until his conviction is vacated or he obtains a pardon or expungement.

D. The Rule of Lenity Has No Application In These Cases

Finally, petitioners contend (Pet. Br. 36-38) that the rule of lenity should be applied in these cases. That rule, however, "is reserved for cases where, after seizing every thing from which aid can be derived, the Court is left with an ambiguous statute." *Smith v. United States*, 113 S. Ct. 2050, 2059 (internal quotation marks and brackets omitted). Accord, e.g., *Moskal v. United States*, 498 U.S. 103, 107-108 (1990); *Gozlon-Peretz v. United States*, 498 U.S. 395, 410 (1991). As we have shown, consideration of the language, purpose, and practical application of Section 921(a)(20) makes it "difficult to imagine any conclusion other than the one" the court of appeals reached in this case. Pet. App. 20a. The rule of lenity therefore has no purchase here.

Indeed, petitioners' argument for lenity is ironic to the extent that it rests on concerns about fair notice. See Br. 36-37. As discussed above, it is petitioners' construction of the statute, which denies the statutory language its natural limiting construction and leaves unresolved the question of what jurisdiction or jurisdictions may relieve a federal felon of his federal firearms disabilities, that would create ambiguity and confusion in the law. The rule of lenity "cannot dictate an implausible interpretation of a statute," *Taylor v. United States*, 495 U.S. 575, 596 (1990), and its application should not create more questions than it resolves.

CONCLUSION

The judgment of the court of appeals should be affirmed.
Respectfully submitted.

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

EDWARD C. DUMONT
Assistant to the Solicitor General

JOHN F. DE PUE
Attorney

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